

The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

December 21, 2004

Peter Buskey  
Buskey's Auto  
PO Box 982  
Ashland, NH 03217

**NOTICE OF NON-COMPLIANCE and  
PERMIT REVOCATION – NCPR # 04-082**

RE: ASHLAND, BUSKEY'S AUTO, EXISTING UNDERGROUND STORAGE TANK FACILITY  
(UST #A- 0110009) (DES # 199301002)

Dear Mr. Buskey:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at 89 Main Street, Ashland, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On June 23, 2004 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on March 21, 2005. This letter contains important compliance and procedural information. Please read it carefully. Also, note that due to the non-compliance status of your facility a Proposed Administrative Fine will be issued under separate cover.**

1. Env-Wm 1401.11 Inventory Monitoring

Env-Wm 1401.11 requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that inventory records for the 10,000-gallon gasoline (Tank 4) and the split 5,000-gallon gasoline/5,000-gallon diesel (Tank 5) USTs were not available during the inspection. One month of inventory records for Tanks 4 and 5 shall be provided to DES.

2. Env-Wm 1401.30 Release Detection for Piping

Env-Wm 1401.30 requires line leak detectors to be installed on all pressurized piping systems and tested annually to confirm that they are operating according to manufacturer's recommendations. DES has determined that a line leak detector was not present for Tank 4. A line leak detector must be installed on Tank 4 and a passing annual line leak detector test shall be provided to DES.

3. Env-Wm 1401.26 Leak Monitoring for New Tanks and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.26 and/or Env-Wm 1401.31 require that a leak monitor for double-wall tank systems continuously operate. The leak monitoring equipment and devices shall be tested

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

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DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

annually for proper operation in accordance with manufacturer's requirements. DES has determined that the leak monitor for both tanks was in alarm condition due to 3 inches of liquid in the interstitial space of Tank 4 and 1.5 inches of liquid in the interstitial space of Tank 5 and the tank systems were not temporarily closed. Liquid needs to be removed from the interstitial space of both USTs and verification that the interstitial sensors are located at the bottom center of both USTs shall be provided to DES. Also, an annual leak monitor test shall be conducted and the results submitted to DES.

4. Env-Wm 1401.33 Corrosion Protection for Piping

Env-Wm 1401.33 requires corrosion protection be installed on regulated piping prior to December 22, 1998. DES has determined that the steel piping under the dispensers for both USTs was not corrosion protected. Soil must be removed from around the steel piping under the dispensers or corrosion protection plans and specifications for the piping must be submitted to DES. Documentation that the steel piping for the USTs is isolated from the soil or corrosion protected must be submitted to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit # 0110009) shall be revoked effective **March 21, 2005**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you

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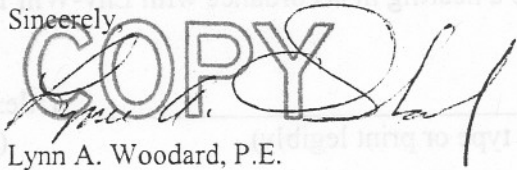
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have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

  
Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 0600 0023 9934 3914

cc: Michael P. Nolin, Commissioner  
Gretchen R. Hamel, DES Legal Unit ✓  
Fred McGarry, P.E., Chief Engineer, WMD  
George Lombardo, P.E., WMD  
Tom Beaulieu, WMD  
Health Officer, Town of Ashland

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**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**APPEARANCE**

\_\_\_\_ I desire a hearing in accordance with Env-Wm 1401 regarding the Permit.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(Please type or print legibly) (Please type or print legibly)

\_\_\_\_\_  
Signature Date: \_\_\_\_\_

**WAIVER OF HEARING**

\_\_\_\_ I certify that I understand my right to a hearing regarding the revocation of the Permit and that I hereby waive those rights.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(Please type or print legibly) (Please type or print legibly)

\_\_\_\_\_  
Signature Date: \_\_\_\_\_

Please return to:

Department of Environmental Services Legal Unit  
Attn: Michael Sciafani, Legal Assistant  
PO Box 95  
Concord, NH 03302-0095